

R590. Insurance, Administration.

R590-215. Permissible Arbitration Provisions for Individual and Group Health Insurance.

R590-215-1. Authority.

This rule is promulgated by the commissioner of Insurance under the general authority granted under Subsection 31A-2-201(3) and incorporates by reference the Department of Labor, Pension and Welfare Benefits Administration Rules and Regulations for Administration and Enforcement: Claims Procedure, 29 CFR 2560.503-1, effective July 1, 2002, and excluding 2560.503-1(a). This federal regulation may be obtained from the Utah Insurance Department.

R590-215-2. Purpose.

This rule recognizes arbitration as an acceptable method of alternative dispute resolution with regards to health benefit plans. This rule is not intended to create procedural guidelines for the administration of arbitration proceedings once commenced. This rule is intended to:

- (1) define the term "permissible arbitration provision" as set forth in Subsections 31A-21-313(3)(c) and 31A-21-314(2); and
- (2) provide guidelines upon which disclosure of a contract arbitration provision is to be made.

R590-215-3. Applicability and Scope.

(1) This rule applies to the following individual and group policies issued or renewed on or after July 1, 2002:

- (a) income replacement policies; and
- (b) health benefit plans.

(2) Long Term Care and Medicare supplement policies are not considered health benefit plans.

R590-215-4. Definitions.

For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Sections 31A-1-301, 78B-11-102, 29 CFR 2560.503-1(m), and the following:

(1) "Adverse benefit determination" means any of the following: a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for, a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on a determination of a participant's or beneficiary's eligibility to participate in a plan. With respect to individual or group health benefit plans, a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for, a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided

because it is determined to be experimental or investigational or not medically necessary or appropriate.

(2) "Compulsory binding arbitration" means a contract provision requiring arbitration as an automatic and exclusive remedy for any dispute involving a contract of insurance to the exclusion of any otherwise available judicial remedy, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.

(3) "Compulsory non-binding arbitration" means a contract provision requiring an insured to exhaust a procedure of extra-judicial arbitration as a condition precedent to the pursuit of an otherwise available judicial remedy.

(4) "Voluntary binding arbitration" means a contract provision that, at the election of the insured, requires an insurer to submit to arbitration as set forth in such contract, provided that the claim or controversy exceeds the jurisdictional limit of the small claims court of the state where the action would be brought.

R590-215-5. Rule.

(1) Compulsory binding arbitration is not a permissible arbitration provision.

(2) Compulsory non-binding arbitration is a permissible arbitration provision when utilized as an internal review of an adverse benefit determination under 29 CFR Subsection 2560.503-1(c)(4).

(3) Voluntary binding arbitration, at the election of an insured party, is a permissible arbitration provision, and may only be used as a voluntary level of review under 29 CFR Subsection 2560.503-1(c)(3)(iii).

(4) Policy forms containing compulsory binding or voluntary binding arbitration provisions for the exclusive election of an insurer will be disapproved under Subsection 31A-21-201(3)(a)(iv). Such provisions in previously approved forms are declared not enforceable. They will be construed and applied as if in compliance with the Insurance Code, as permitted under Section 31A-21-107.

(5) Each application pertaining to an individual or group health benefit plan, and income replacement policy, which contains a voluntary arbitration provision, must include or have attached a prominent statement substantially as follows:

ANY MATTER IN DISPUTE BETWEEN YOU AND THE COMPANY MAY BE SUBJECT TO ARBITRATION AS AN ALTERNATIVE TO COURT ACTION PURSUANT TO THE RULES OF, THE AMERICAN ARBITRATION ASSOCIATION OR OTHER RECOGNIZED ARBITRATOR, A COPY OF WHICH IS AVAILABLE ON REQUEST FROM THE COMPANY. THE COMPANY SHALL BEAR THE COSTS OF ARBITRATION,

FILING FEES, ADMINISTRATIVE FEES AND ARBITRATOR FEES. OTHER EXPENSES OF ARBITRATION, INCLUDING, BUT NOT LIMITED TO: ATTORNEY FEES, EXPENSES OF DISCOVERY, WITNESSES, STENOGRAPHER, TRANSLATORS, AND SIMILAR EXPENSES, WILL BE BORNE BY THE PARTY INCURRING THOSE EXPENSES. ANY DECISION REACHED BY ARBITRATION SHALL BE BINDING UPON BOTH YOU AND THE COMPANY. THE ARBITRATION AWARD MAY INCLUDE ATTORNEY'S FEES, IF ALLOWED BY STATE LAW, AND MAY BE ENTERED AS A JUDGMENT IN ANY COURT OF PROPER JURISDICTION.

Such statement must be disclosed prior to the execution of the insurance contract between the insurer and the policyholder and, shall be contained in the certificate of insurance or other disclosure of benefits.

(6) A voluntary binding arbitration provision may not preclude a dispute from being resolved through any small claims court having jurisdiction.

(7) All arbitration provisions contained in insurance policies shall be in compliance with the "Utah Arbitration Act," Title 78B, Chapter 11.

(8) Any such agreement for arbitration shall not obligate an insured to pay for the arbitration in accordance with 29 CFR 2560.503-1(c)(3)(v).

(9) No arbitration provision may require that arbitration be held at a place further from the residence of the insured than the nearest location of a State Court of General Jurisdiction.

R590-215-6. Severability.

If any provision of this rule or its application to any person or situation is held invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

R590-215-7. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule when they take effect.

KEY: health insurance arbitration

Date of Enactment or Last Substantive Amendment: May 20, 2003

Notice of Continuation: December 8, 2017

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 29 CFR 2560.503-1